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Supreme Court, U.S.
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No. 97-1204

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

THE STATE OF FLORIDA,

Petitioner,

vs.

DOUGLAS MARTIN ESCOBAR,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE CASE AND FACTS

The Respondent, DOUGLAS ESCOBAR, accepts the Petitioner's Statement of the Case and Facts as only a partially accurate account of the material facts for this Court's consideration and, accordingly, supplements the following facts where Petitioner's are incomplete and inaccurate.

A. The Petition Misrepresents the Trustworthiness and Reliability of Douglas' Statements.

DOUGLAS ESCOBAR's admission that he told the co-defendant, his brother, DENNIS ESCOBAR, to shoot the victim came during an interview with police officers shortly after major surgery at a time when DOUGLAS was listed in extremely critical condition, was suffering delirium tremens as a result of alcohol withdrawal, had been receiving extremely large doses of morphine at regular intervals for three to four days, and had a chest thoracostomy tube coming out of his chest, a catheter tube in his penis, oxygen in his nostrils and I.V. tubes in his arms. (pp. 14a-19a). There was unrebutted medical testimony that the "usual reactions of the morphine that he was receiving could really affect him, particularly his recall, and he might have been agreeing with that was being said [to him] at the time" and that the Defendant would have been "susceptible to suggestion, easily manipulated and not fully in control of his mental faculties." (pp. 14a, 19a, 20a).

During that time while DOUGLAS ESCOBAR was recovering from surgery and under heavy doses of morphine, DOUGLAS had been overheard to say, "I killed

a policeman in Miami" and "I killed an officer" and "drew gun on me, start to shoot." (p. 3a). During the interrogation conducted by Miami Police Detective George Morin, the detective informed DOUGLAS that DENNIS, the co-defendant, told the detectives that DENNIS had fired the shot that killed the officer, and that DOUGLAS did not fire the shot.[1] (pp. 10a-14a, 22a, 23a). DOUGLAS repeatedly denied his involvement in the shooting, but not his presence at the scene, saying that he is "not a killer," "only a car thief," "not a murderer," and "not a cop killer." (pp. 4a-5a, 23a). In a conflicting version, DOUGLAS also stated that he knew he was guilty and that it was difficult to confess. (pp. 7a, 25a, 26a).

B. The Petition Omits Conflicting Versions of Dennis' Statement.

Throughout the questioning by Detective Morin, DOUGLAS repeatedly expressed great concern about what DENNIS had actually told them. (pp. 6a-8a, 24a, 25a). In an effort to elicit information from DENNIS, Detective Morin told DENNIS that both DENNIS' wife and DOUGLAS had given him information about who shot the policeman. Morin told DENNIS that DENNIS' wife had told the police that DENNIS told her that DOUGLAS shot the police officer. (p. 1a). Morin separately told DENNIS that DOUGLAS informed the police that DENNIS shot the police officer. (p. 1a). During the interrogation, DENNIS had said he "felt like

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[1] The version of the shooting advanced by the STATE was consistent with the version first suggested to DOUGLAS by Detective Morin which Morin conceded he "wanted [DOUGLAS] to believe." (pp. 5a, 9a).

Morin was trying to involve him in something he was not involved in." (pp. 2a, 33a). To induce DENNIS to give a statement, Detective Morin tried to convince DENNIS that DOUGLAS had given a statement. (pp. 30a-31a).

After two unsuccessful attempts to elicit information from DENNIS, DENNIS finally agreed to speak to the detectives only after Detective Morin told DENNIS that DOUGLAS told DENNIS to shoot the police officer. (pp. 21a, 27a, 28a). DENNIS then gave a statement that, on the night of the incident, he and his wife were home alone when DOUGLAS came in and said he had just killed a policeman.[2] (pp. 28a, 34a). When Morin rejected this version and walked out, DENNIS called Morin back and said he would tell him what he wanted to know if he would leave his wife alone.[3] (pp. 28a, 29a).

Having agreed to tell the detectives what they wanted to know, DENNIS then gave a statement ultimately adopting the second version previously advocated by Detective Morin: that DOUGLAS told DENNIS "if he gets out, shoot him." (p. 31a). DENNIS' statement to Morin was given in Spanish outside the presence of any other Spanish speaking person although other Spanish speaking witnesses were readily available. (p. 34a). Trial testimony further established that Detective Morin was the victim's fellow comrade [redacted] fourteen years and

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[2] Consistent with Detective Morin's first version offered.

[3] DENNIS had expressed great concern about his wife and children and was told that his wife was in custody and that if no family members were found the Florida State Department of Health and Rehabilitative Services would take his children (pp. 2a, 35a, 36a).

that Morin was under strong departmental and political pressure to solve the crime expeditiously. (pp. 20a, 32a, 33a).

REASONS FOR DENYING THE WRIT

The Petition's legal claim, that the court below applied an incorrect standard in determining whether the statement against penal interest exception to the hearsay rule is "firmly rooted," does not warrant review by this Court. Additionally, the Petition's fact bound claim that the court below disregarded other legitimate factors reflecting trustworthiness is incorrect. The totality of the facts support the conclusion that the decision below was proper and that the Court correctly applied well-settled law.

A. The Issue Raised By The STATE Does Not Involve A Federal Question And Therefore Does Warrant Certiorari Review.

The United States Supreme Court does not sit as a court of criminal appeals to review state cases. The states are free to prescribe new, and alter existing, rules of evidence, or to prescribe methods of proof, provided they do not violate constitutional requirements or deprive any person of his or her constitutional rights. *Burgett v. State of Texas*, 389 U.S. 109 (1967). It is beyond the pale of the United States Supreme Court's proper function in the federal system to interfere with the constitutional power of states to promulgate their own rules of evidence or to try their own state-created crimes in their own state courts, so long as their rules are not prohibited by any provision of the Federal Constitution.

Id. "Since the law of evidence is part of the law of Procedure, each independent jurisdiction in the United States has its own laws of evidence. Thus, there are many separate bodies of evidence law in the United States as there are independent jurisdictions." John H. Wigmore, *Wigmore on Evidence* 15 (1935).

In the instant case, the Florida Supreme Court's determination of error below rested on the "indicia of reliability" of the statements made by DOUGLAS and DENNIS ESCOBAR. It relied on its contemporaneous decision in *Franqui v. State*, 699 So.2d 1312 (Fla. 1997), where it held that the interlocking nature of confessions, alone, cannot provide the basis upon which to determine whether there are sufficient indicia of reliability to introduce the co-defendant's hearsay confession as substantive evidence of defendant's guilt. According to Florida's highest court, neither is it sufficient that the statements interlock on a great many details. As the Florida Supreme Court stated, "particularized guarantees of trustworthiness" must be shown from the totality of the circumstances, and the relevant circumstances include only those that surround the making of the statement and that render the declarant particularly worthy of belief.[4] *Franqui*, 699 So.2d at 1318. This is consistent with *Idaho v. Wright*, 497 U.S. 805 (1990) (the Court held that admission of child's hearsay statements violated respondent's Confrontation Clause rights where the statement did not fall within a firmly rooted hearsay exception nor was supported by a showing of particularized guarantees of trustworthiness).

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[4] In *Wright*, this court recognized that where hearsay statements do not fall within a firmly rooted exception, they are presumptively unreliable and inadmissible for Confrontation Clause purposes and must be excluded, absent a showing of particularized guarantees of trustworthiness. *Wright*, 497 U.S. 805.

While the STATE contends that admission of DENNIS' confession falls under a firmly rooted hearsay exception for declarations against penal interest and, thus, satisfies the constitutional requirement of reliability mentioned by this Court in *Wright*, the current law in the State of Florida reflects that this exception is *not* firmly rooted. *See Franqui v. State, supra.* Insofar as Florida law does not violate United States constitutional requirements, the Florida Evidence Code is not limited to provisions analogous to the Federal Rules of Evidence. *Burgett v. State of Texas*, 389 U.S. 109 (1967). Accordingly, the question in this case of whether the hearsay exception for statements against penal interest is firmly rooted or not firmly rooted is a state determination that does not constitute a federal question subject to review by this Court.

Contrary to the STATE's suggestion, the Florida Supreme Court is not bound by any of the Federal Circuit Courts of Appeals decisions determining that the exception is firmly rooted, as state courts are clearly authorized to rely on the prescribed rules of their respective state governing the admissiblity of evidence in their own courts, provided they do not deprive any person of his or her constitutional rights. *Id.* Nor is the Florida Supreme Court required to look to other states to determine whether this exception to the hearsay rule is firmly rooted and, thus, sufficiently reliable. It is noteworthy that the STATE's brief advises that it only found eight states concluding that the exception to the hearsay rule for statements against penal interest is firmly rooted, and conceded that eleven states, ruling on the issue, determined that the exception is *not* firmly rooted. (STATE's Petition, pg. 7).

While it may very well be appropriate for this Court to grant review of a federal appeal from a United States Circuit Court of Appeals, since there appears to be a conflict amongst the Circuits as to whether the federal hearsay exception rule for statements against penal interest is firmly rooted, the instant matter is certainly not the right case to do it because it not appropriate to use a *state court decision*, analyzing a *state rule of evidence*, to resolve this conflict, especially where at least twelve states hold that the exception is not firmly rooted.

After determining that the hearsay exception was not firmly rooted in the Florida Evidence Code, the Florida Supreme Court proceeded to examine the totality of the circumstances surrounding the making of the statements in this case to determine whether they were sufficiently reliable to satisfy the Confrontation Clause. Where the initial statements of DENNIS and DOUGLAS about the shooting were inconsistent in material aspects,[5] where there were no eyewitnesses, where there were no joint statements by the defendants, where the statement of DENNIS was likely induced by the suggestions of the officer, where there was no physical corroborating evidence which would indicate the identity of the shooter and where the attorneys' theme at DENNIS and DOUGLAS' joint trial was that the other brother was solely responsible for the murder, the inconsistent statements were properly found by the Florida Supreme Court to be unreliable and, thus, improperly admitted into evidence.

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[5]See Counter-Statement of the Case and Facts, *supra*.

B. There Is No Error Where The Incriminating Hearsay Statement Is Not Sufficiently Reliable To Satisfy The Requirements Of The Sixth Amendment Confrontation Clause.

The admission of the co-defendant's confession implicating the Respondent, DOUGLAS ESCOBAR, in the joint murder trial was critical to the STATE in making its case against DOUGLAS. Since there were no eyewitnesses to the murder, the only evidence of DOUGLAS' involvement in the murder was from the separate statements of DOUGLAS and his brother, DENNIS. Although the STATE is correct that the brothers' purported confessions in this case interlock on *some* details, the statements are not similar with respect to significant details and were not sufficiently reliable to satisfy the requirements of the Sixth Amendment Confrontation Clause as required in *Bruton v. United States,* 391 U.S. 124 (1968).

In *Bruton,* this Court held that a defendant was deprived of his rights under the Confrontation Clause when his co-defendant's incriminating confession was introduced at their joint-trials, even where the jury was instructed to consider that confession only against the co-defendant. This Court noted that not only are these incriminations devastating to the defendant, but their credibility is inevitably suspect, given the motivation to shift blame onto others.

In *Cruz v. New York,* 481 U.S. 186 (1987), this Court, following *Bruton,* held that it was a violation of the Confrontation Clause and error to admit a co-defendant's confession to both his friend and police officers, incriminating the defendant, even though the defendant's own confession to the same friend was admitted against him. The Court further stated, however, that the defendant's confession could be considered at trial in assessing

whether his co-defendant's statements were supported by a sufficient "indicia of reliability" to be directly admissible against him and may be considered on appeal in assessing whether any Confrontation Clause violation was harmless. *Cruz*, 481 U.S. at 194.

As a matter of Florida law, the issue of admissibility of interlocking confessions in a joint trial has been addressed by the Florida Supreme Court. *See Puiatti v. State*, 521 So.2d 1106 (Fla. 1988); *Glock v. Dugger*, 537 So.2d 99 (Fla 1989); *Roundtree v. State*, 546 So.2d 1042 (Fla. 1989). The significant test which the Florida Supreme Court applied in *Puiatti* and *Glock*, in similar fashion to this Court's analysis in *Cruz v. New York*, was the "indicia of reliability" standard. The *Puiatti* and *Glock* cases are distinguishable, however, from *Cruz v. New York*, based on the Florida Supreme Court's ultimate finding of harmless error where the defendants in those two cases not only entered into separate interlocking confessions, but they also subsequently entered into a joint confession resolving all prior inconsistencies. *Glock*, 537 So.2d at 102; *Puiatti*, 521 So.2d 1108.

In *Roundtree*, the Florida Supreme Court found that it was error to admit the interlocking confession of the co-defendant and followed this Court's decisions in *Cruz v. New York*, *supra*, and *Lee v. Illinois*, 476 U.S. 530 (1986). The facts in *Roundtree* are similar to the facts in the case at bar. In *Roundtree*, the case was remanded for new trials, in which the defendant and co-defendant would be tried separately, where the confessions of the co-defendants interlocked on many details, but the discrepancies between the two confessions were significant. *Id.* at 1046. There were no witnesses to the murder and the only evidence of Roundtree's participation (other

than Roundtree's confession) was from the co-defendant's confession. The *Roundtree* court stated, in pertinent part:

> When discrepancies involve material issues such as the roles played by the defendants and whether the crime was premeditated, a co-defendant's confession is not rendered reliable just because it happens to contain facts that interlock with the facts of defendant's statement.

Id. at 1046. As in *Roundtree*, the various statements of DOUGLAS and DENNIS ESCOBAR happen to interlock on details such as how they spent the day together on the day of the murder and how they participated in the theft of a car, but the *material* issues such as the roles played by the defendants in the murder and whether the crime was premeditated or spontaneous are neither interlocking nor reliable.

While the 1990 Amendment to Florida Statute §90.-804(2)(c) may have eliminated the Florida *statutory* prohibition against the admission of a statement or confession which is offered against the accused in a criminal action, and which is made by a co-defendant or other person implicating both himself and the accused, it did not attempt to nor did it affect the requirement, enunciated by this Court and the Florida Supreme Court, that such a statement be supported by sufficient indicia of reliability before it can properly be admitted into evidence.

The Florida Supreme Court's holding in the instant case is also consistent with this Court's opinion in *Lee v. Illinois*, 476 U.S. 530 (1986). In *Lee*, this Court held that a co-defendant's confession, which was given only after he was told that the defendant had already implicated him, was presumptively unreliable and, thus, did

not contain sufficient indicia of reliability flowing from either the circumstances surrounding the confession or the "interlocking" character of the confessions to overcome the presumption against admission of such uncross-examined evidence based on the Sixth Amendment to the United States Constitution.

Since the Florida Supreme Court correctly held that the exception to the hearsay rule for statements against penal interest is not firmly rooted in the Florida Evidence Code, and that DENNIS' statement was not sufficiently reliable to satisfy the minimum requirements of the Sixth Amendment Confrontation Clause, this Court should deny the writ.

C. The Statements Are Not Substantially Reliable Where They Are Induced And Overheard By Only One Single Spanish Speaking Officer.

The only evidence as to the role played by DOUGLAS in the shooting in his statement to the co-defendant to "shoot him" was recounted in two conflicting versions by Detective Morin, the only person to have overheard the purported confessions.

After unsuccessful attempts to elicit information from DENNIS, Detective Morin told DENNIS that both DENNIS' wife and DOUGLAS had given him information about who shot the policeman. To further induce DENNIS to give a statement, Detective Morin tried to convince DENNIS that DOUGLAS had given a statement. Then, the detective offered fact-specific different versions of what happened to DENNIS, and DENNIS merely adopted the second version – that DOUGLAS told DENNIS "if he gets out shoot him." (p. 31a).

Thus, DENNIS merely adopted one of the detective's stories after being told DOUGLAS had already agreed to

it and after being told that his wife was in custody and that if no family members were found to care for the children the Department of Health and Rehabilitative Services would take his children away. (pp. 2a, 35a-50a). It is also noteworthy for the purpose of determining reliability and trustworthiness of these purported confessions, that DENNIS' statement to Morin was given in Spanish outside the presence of any other Spanish speaking person, without any independent corroboration. Based on these facts, the circumstances surrounding the making of these statements were not totally reliable and, thus, not sufficient to withstand the Constitutional Confrontation Clause requirement that the statement ring of reliability and trustworthiness.

D. There Is No Error Where The Co-Defendant's Statement Is Not Truly Self-Inculpatory.

The STATE's reliance on *Williamson v. United States*, 512 U.S. 594 (1994) is misplaced. In *Williamson*, this Court stated that "[e]ven the confessions of arrested accomplices may be admissible if they are truly self-inculpatory, rather than merely attempts to shift blame or curry favor." *Williamson*, 512 U.S. at 603. Thus, a co-defendant's individual, self-incriminating statement must focus on his *own* actions to be admissible.

Williamson is not applicable to the case at bar where DENNIS' alleged confession lacked the particularized guarantees of trustworthiness that the *Williamson* Court claimed existed in "truly self-inculpatory" admissions that were not made "to shift blame or curry favor." *Id.* The confession in the instant case was inherently unreliable and not truly self-inculpatroy based on the material discrepancies shown in the different versions received by the officers and based on the tenor of DENNIS' confes-

sion reflecting his desire to point the finger at his brother as the one who conceived of committing the shooting and who ordered his brother to shoot the officer.

E. The Error In Admitting Inadmissible Hearsay Statements Cannot Be Deemed Harmless.

With respect to the STATE's harmless error argument, the error committed by the trial court in admitting the non-testifying co-defendant's statement cannot be deemed harmless where the record did not consist of joint statements, the individual statements were inconsistent in material aspects, the confession was clearly prodded out of DENNIS who ultimately only adopted the version offered by the officer, there was no physical corroborating evidence and there were no eyewitnesses.

In view of the inherent problems that exist with respect to the inculpatory statements at issue, this case is clearly not appropriate for review by this Court. (See Subsection C, pg. 11). There is ample law written regarding the admission of a non-testifying co-defendant's incriminatory statements under the hearsay exception for statement against penal interest which states that if the statement falls within a "firmly rooted" hearsay exception or if the statement had particular guarantees of trustworthiness shown from the totality of the circumstances, the statements would be sufficiently reliable to withstand Confrontation Clause problems. Nothing special or novel exists in this case that warrants this Court's discretionary review. Under the authority bestowed upon states to establish and alter rules of evidence, subject to constitutional limitations, the State of Florida could, and did, properly find that the hearsay exception for statements against penal interest was not firmly rooted in the Florida Rules of Evidence and, accordingly,

such statements are presumptively unreliable and inadmissible for Confrontation Clause purposes. *Lee v. Illinois, supra.* Furthermore, any additional clarification of "particularized guarantees of trustworthiness", that which must be shown from the totality of the circumstances to determine the reliability of the statement for Confrontation Clause purposes, is highly unlikely as these factors depend on the facts and circumstances of each particular case.

F. There Is A Strong Likelihood of The Case Being Reversed On Other Grounds.

Finally, even if this Court were to grant the STATE's Petition for Writ of Certiorari, there is a strong likelihood that this case will be reversed, anyway, on other grounds which the Florida Supreme Court addressed in its decision granting a new trial.[6] The trial court erroneously admitted similar fact evidence, known in Florida as *Williams* rule evidence,[7] concerning DOUGLAS' attempted first-degree murder conviction for shooting a California Highway Patrol trooper and other incidents of violence. The Florida Supreme Court found that

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[6] Although the Florida Supreme Court expressly reversed Douglas' convictions and sentences on the basis of the error in admitting into evidence incriminating portions of the co-defendant's out-of-court statement, it also found error in another evidentiary issue, detailed in its opinion, which leads to the inexplicable conclusion that this case will be reversed for a new trial, regardless of the outcome before this Court. *Escobar v. State*, 699 So.2d 988, 992 (Fla. 1997).

[7] In *Williams v. State*, 110 So.2d 654 (Fla. 1959), the Court held that similar fact evidence, such as testimony concerning a collateral crime, is not admissible if it goes only to show a defendant's bad character or propensity. *Id.* at 662. *Williams* has been codified as section 90.404(2)(a), Florida Statutes (1989), and is commonly known as the *Williams* rule.

there was not a sufficient evidentiary nexus in the record of the trial to have permitted the jury in this case to reasonably infer that DOUGLAS' other crimes or bad conduct was related to the murder in this case. Thus, the Court concluded that the evidence of other crimes was, for the most part, inadmissible.

In view of the obvious potential for reversal on other grounds, the instant case will likely be retried regardless of this Court's disposition and, thus, this Court's review of the present case will not have a significant impact on the outcome of this case. Therefore, the only true effect of granting review in this case will be its precedential value, which is an insufficient basis for granting review since it takes on the appearance of an advisory opinion.

CONCLUSION

Based on the foregoing arguments and authorities, the petition should be denied.

Respectfully submitted,

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APPENDIX

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Case No. 89-11887-B

Circuit Court Of
The Eleventh Judicial Circuit Of Florida
– DADE COUNTY –

* * *

[758] from the main building.

When we reached there, as we were signing out of the prison one of the guards there at the desk told us that he had just received a phone call from the medical ward that Dennis Escobar had changed his mind and that he wanted to speak to us again.

Q So, did you return there?

A Yes. We did walk back up to the medical ward.

Q How much time actually transpired between the time you left and returned to him?

A It was a total of 15 minutes because it's a seven, eight minute walk from one way from the medical building to the front of the prison.

Q And when you arrived back in the presence of Douglas Escobar, what occured?

A He started questioning Roberson and I but mainly he was speaking to me in Spanish and his questions were as to what his brother had told us and to what his wife had told us regarding Officer Estafan's homicide.

And I explained to him that his wife had gone to the extent that telling us on the night that Officer Estefan

was killed he came home. He arrived home and she was in the bedroom. He approached her

* * *

[806] A I don't recall exactly who wrote that.

Q All right. You don't know if it was Detective Morin or the defendant who actually put that on the form?

A I don't recall who wrote it.

Q Okay. After that form had been presented and signed by the defendant, what happened?

A At that time, Detective Morin began to interview the defendant about an incident that occurred in Miami.

Q And did the defendant say anything or do anything?

A The defendant became upset that Detective Morin was asking him about that and wanted to know how he had come about this information.

Q And how did Detective Morin respond to that?

A He said that the investigation they had conducted had focused on him and at which time he said, told him that we had been in contact with several people who had provided information.

Dennis then said that he felt Detective Morin was trying to involve him in something that he was not involved in and he did not want to talk about that incident.

* * *

[847] A Then they again spoke to me reference the Miami case and I again repeated that I did not know anything about what they were saying to me.

They told me that they already knew everything because my wife was detained. She was in hail and she had told them everything.

Q Who told you that?

A The Detective Morin.

Q Go ahead.

A And that if I did not speak and plead guilty, my wife was going to be given five years of prison for using her as and instrument of the crime. And that my children had been taken away and that if I did not plead guilty they were going to be taken away.

Q Did you believe that?

A And so I believed him.

Q Well, did you ask to speak with your wife or your children?

A Yes. I asked to let me make a phone call to see if it was true what he was saying. And he repeated again that until I plead guilty he was not going to let me do the phone call.

Q So what happened?

A And then I told him how could I plead guilty of something that I had not done.

* * *

[886] case in existance at that time?

A No, I did not.

Q All right. Have you read the rights and you indicated he was willing to talk to you. What occurred?

A He would fall asleep and then we would wake up. We would talk a while. He would make some spontaneous statement every now and then.

Q And what kind of statement did he tell you or what questions did you ask and what was his responses to those questions?

A He made a statement and if I can refer to my notes I'll quote it as.

THE COURT: Make can reference now to the—

MR. BAND: To the police report.

THE WITNESS: My police report.

At 5:50 a.m. on the 28th, Mr. Escobar stated, quote, "I killed a policeman in Miami. California was looking for me. So I went to Florida. I was driving with no license. They pulled me over and drew their gun on me, start to shoot. So, I killed an officer."

* * *

[927] Q All right. Before we go into how he responds to that I would like to explore the issue.

You weren't entirely genuine with Mr. Douglas Escobar concerning certain information; is that correct?

A That is correct.

Q That is, you had not spoken to his brother Dennis at that point; is that correct? Or you had spoken to him but actually had not illicited a statement from him?

A Yes.

Q What about the car?

A I was really not authentic about the car but I had information of the car from Gilberto Seballos who we had spoken to earlier and that's where the information of the car came about.

The car was not in our possession at the time and neither did we have a fingerprint located on the gas cap of the car.

Q After you suggested these things to Douglas what occurred?

A He made several comments. The first comment that he made that led me to believe that he was going to

cooperate or give a statement regarding this incident was when he said, "I am not a killer."

[928] And I continued that by telling him—

Q He said, "I am not a killer." Or "I am not a cop killer."?

A At that point he said, "I am not a killer." I believe was all he said.

And I told him, "I realize you are not a killer. You know, I know that you didn't pull the trigger. I know that you didn't fire the shot that killed the officer. That your brother did. He told us he did." But that regardless that he was there and we have to be truthful and he would have to tell us what happened. And that he would eventually have to answer for his actions.

We explained to him what we were talking to him about was a very serious matter.

Q And how did he respond?

A He said after that he said he had no motives or reasons. He said that he was only a car thief.

And then I went onto say to him that any time a police officer gets killed it turns into an investigation of great magnitude. That a lot of people get involved.

I explained to him that we had done our homework. That we had not travelled all the way to California to ask him whether or not he had or had not [929] killed a police officer. Rather that we knew he had been involved in the incident and we only needed to hear from him what the reasons were, why they had done it.

Q And how did he respond?

A Again, he responded by saying, "I am not a murderer."

And again I explained to him that I realized he was not a murderer. That his brother was the one that actually fired the shots but that we needed to hear from him at

least several facts whereas he could tell us things that we could verify and we would know he was being truthful to us or with us to a certain extent.

Q And what did he tell you?

A Well, I went up to tell him, I gave him an example. I said one of the ways you can verify some of those facts is to tell us where was the place that they had left the car and he told me that he was not familiar with the Miami area but he knew at that car had been left in a parking lot which was very close to his brother's area in an apartment parking lot on 7th street.

I then asked him where was the place that he had taken the car to get it washed because we had [930] learned from Gilberto about the car being washed. He tried to erase the prints and he told us that he had taken the car the day after the shooting of Officer Estefan he had taken the car to a car wash which was right next to the Los Peblos marked on Northwest 7 street and he indicated that that was not very far from his brother's house either.

At that point I explained to Douglas that I believed he was being about 80 percent truthful with us but that we needed to hear a little bit more.

I told him I realized what he had told us was true because it was corroborated by Gilberto and by his brother Dennis and then I told him what I needed was I needed to hear the truth from him about the entire incident.

And then he proceeded to question us as to what Dennis, his brother had old us or the information we had from Dennis.

And it was explained to him at that time that it would not be wise for us to tell him what Dennis had told him because we already had Dennis' version. We did not want him to hear or for him to repeat what Dennis had said.

Rather we wanted to hear his version of the events. If he told us something inconsistent from what we knew from Dennis therefore

* * *

[940] is as we were walking out he requested that I come back and he called for me specifically. He asked me to come back in the room.

Q How did he do that?

A He called my name.

Q Detective Morin?

A Detective Morin and he asked what his, again he wanted to know what his brother had told us.

Q And what did you respond?

A I responded to him I would tell him at a later time exactly what his brother had told us but first we wanted to obtain his statement from his.

Q All right. Did you then leave the hospital?

A Yes.

Q All right. And did you return sometime that evening?

A Yes, sir.

Q About what time?

A At about 6:00 p.m.

Q Prior to that did you stop by and pick up the magazines he requested?

A Yes, we did.

Q And who was with you on this trip to the hospital?

A Detective Roberson was.

* * *

[945] That he knew that he was guilty. He was guilty of what he had done in California and guilty about what he had done in Miami but he a wanted to get the eighty

thousand dollars to his family and if we can get his family the eighty thousand dollars he would give a statement.

Q And how did you respond to that?

A We told him that that was impossible. That under no conditions would we be able to give him or reward him or his family for killing one of our police officers and then he proceeded to ask about how much time he would get and where he would serve his time if he was convicted of these crimes in California and Florida.

Detective Roberson explained to him that if he was found guilty of in California he would then be tried in Florida and should he be found guilty in Florida that more than likely his sentence would be served in Florida and he told Detective Roberson that he wanted his, if he was to serve his time in Florida that he wanted his wife and his child to come to Florida, not to say in San Luis.

Detective Roberson told him there was no way he could promise him anything. He could not promise him the reward. He could not promise the relocation

* * *

[948] Q And how long did the earlier interview last?

A 45 minutes or so.

Q Was there any difference in his physical condition between the early interview and this later interview?

A No.

Q Did he at the later interview, did he complain of any pain or discomfort?

A No.

Q Did he appear to you to be under the influence of any medication?

A No.

Q Did he answer your questions or were his answers responsive to the questions you asked?

A Yes.

Q Yes, they were.

Q Were they clear?

Q In English?

A Yes.

Q Did you—when you concluded—was this the conclusion of your interview at this time then of Mr. Douglas Escobar?

A Yes. Accept for before we left he asked me to explained to him what his brother had told him and I basically gave him a synopsis of obviously [949] information that I wanted him to believe that I had but I really did not have at that particular point.

Q After that was finished, that is, you telling him what he thought his brother had told you, what occurred? Did you leave the room?

A Yes, I did.

Q When you were leaving the room were there other officers waiting to interview Mr. Escobar?

A Yes.

Q And what officers were they?

A Roman Finale from the highway patrol in California and Manny Barrasa from the Pasa Robos police department.

Q And did they go in to interview Mr. Douglas when you had finished?

A Yes, they did.

Q Do you know how long they were in there?

A Probably a little over an hour.

Q Did you see them when they finished?

A Yes, I did.

Q When they finished did you go back into the room to speak to Douglas about anything?

A I did. While they were in there I had made a phone call back to our office and we spoke to our lieutenant and told him basically what Douglas had

* * *

[1069] A Yes, it is.

Q And when does that begin to be administered?

A The first notation in the ICU notes of administration of Morphine to Mr. Escobar is at 0900 hours on 4-27-88.

Q What is 0900 hours?

A 9 a.m.

Q And is that close to or approximate in time as to when he got in surgery?

A He got out of surgery and was received in the ICU just before 8 a.m.

Q How much or what is the dosage of Morphine and what type of Morphine is it. If you can tell me?

A Well, it's the the immediate acting form of injectible Morphine called Morphinesulfate.

He received a dose of two milligrams which is given, it says IVP which means IV-push.

Injectible Morphine is usually given directly into the intravenous line with a syringe over a slow IV-push over a period of four to five minutes.

Q And what is the next instance when he was given Morphinesulfate?

A The next dosage occurs 40 minutes later at 9:40 a.m.

Q We are on the 27th of April now?

[1070] A Of April. At that he received four milligrams of Morphinesulfate again. Slow IV-push and the nurses indicated in both cases that it was being given for pain.

Q What is the next instance?

A The next it occurred one hour later at 10:40 a.m. The nurse indicates that he received another four milligrams Morphinesulfate intravenously.

Q Generally speaking, more specifically if you would like, does the administration of Morphine happen at regular intervals for the next several days?

A It does. He receives Morphine more or less regularly every hour. In some cases as long as two hours.

Initially 4-27, each time intravenously, directly in the intravenous line throughout the day on the 27th.

He received on most occasions two milligrams. On a few occasions, well, actually, it's about half and half. Two milligrams to four milligrams intravenously every, pretty much every hour.

Q Okay. A nurse is doing this at a doctor's instructions?

A At Dr. Henry's order.

[1071] Q Dr. Henry is the—

A Is the treating, the surgeon who has primary authority for Mr. Escobar's treatment.

Q Now, is there an increase in dosage you detect from reading those notes?

A Yes.

Q During the periods of time you have in front of you?

A Yes. On 4-27 at 16:20 the dosage of Morphine was increased to six milligrams intravenously.

Q And specifically what time was that?

A 16:20.

THE COURT: That means 4:20 in the afternoon.

MR. COHN: Thank you.

THE WITNESS: Most medical reports are given in 24 hour time.

BY MR. COHN:

Q And up until this particular time when he received

six milligrams of Morphine, is there any other drug that you detect he's being given. For instance, Demarol, Valium, Percodan, anything at all?

A He was not being given Demarol, Valium or Percodan. He was receiving antibiotics intravenously. [1072] Mostly for prophylactic prevention of infection in the multiple wounds that he had. He did occasionally receive oral Tylenol for fever.

Q When did that begin?

A The order was written at the time of surgery. The first dose he received was at 16:30 on 4-27.

Q Now, are there other notations which indicate his generally condition. For instance, bowel sounds, stomach dystension, pneumonia, things like that?

A On the—are we still talking about the 27th?

Q Yes.

A On the 27th he seemed to be having what one would consider, what one would consider to be a fairly normal post operative given the extent and the severity of his injuries. Fairly routine post operative course on the 27th.

Q And then on the 28th?

A On the 28th he began having problems with abdominal dystension, the abdomin getting distended, rigid, decreased bowel sounds indicating some decreased mobility of the bowel and intestines.

On the 28th also was was the first notation [1073] of decreased breath sounds.

Q An the 28th?

A On the 28th, yes.

And he was continuing to receive injections of Morphine intravenously every one to two hours.

Q Now, is someone given Morphine because they complain of pain or is it because a doctor tells someone

that, tells a nurse that you better start giving him Morphine for a particular reason?

A No. The Morphine order was not written as a regular order by Dr. Henry to be given at a certain fixed time. The Morphine order was written, what we call PRN or in other words when the patient requires it and it was given. Dr. Henry wrote that the medication was to be given as needed for pain.

Q In other words, if a nurse saw or observed that someone was in pain that they would come in and they would administer or put in some Morphinesulfate; is that correct?

A That's correct.

Q Now, what is a half life or what is the description half life of a particular drug? What does that many?

A The half life of a drug refers to basically it's a time interval you would say the half life of a [1074] drug is one hour or two hours. That means that after the initial administration of that drug that if the half life is two hours say that two hours later half of the initial dose of the drug will still be in the patients system at that time.

Q Would that mean that there is a cumulative effect from the drugs that have been administered or the Morphine in this case that was administered to this particular individual as the days progressed?

A Yes. The half life of Morphine which is the drug we are talking about in this days is 1.5 to 2 hours and he was frequently given medications at more frequent intervals than one and a half two hours. Meaning that when he got the next dose of medication, still at least half, if not more, of the medication that he was previously given was still present.

Q Up until this point we are at the 28th. We didn't go any further than that. Would you consider the amount of

Morphine he was receiving a small dosage, a large dosage, medium dosage? How would you describe it?

MR. BAND: Objection. I don't think there's a basis other than to base it upon as what a psychiatrist physician. What's the basis?

THE COURT: Sustained.

* * *

[1094] A In fact, his condition appeared to deteriorate throughout the day and by 6 p.m. or 6:30 when he was we interviewed he was beginning to express bizarre material and act in an overtly bizarre manner.

Q Okay. Doctor, given the dosages of Morphine that you have seen in this particular case with Douglas Escobar, can you tell me whether or not he is someone who would be susceptible to suggestion. That is, easily manipulated?

A Yes. I believe Douglas Escobar or anyone who had received massive doses of narcotic mind altering medications that he had received would be again not fully in control of their mental faculties and could be open to suggestion.

Q In other words, if someone came into his hospital room, had a clear mind and had an objective or a goal and they were easily or wanted to suggest something to him or wanted him to do something, he probably would do what they wanted?

A I think he certainly could do what he or anyone with under the influence of that much medication could certainly do so.

A Now, the questions that I have asked you about the fact that these Miranda rights were given to Mr. Escobar, you stated to us and you have stated to [1095] the Court very clearly that you felt he was not able to comprehend. What do you base that on?

A On the large, extremely large doses of narcotic medication that he was given. One of the specific effects of which is to cause mental confusion, drowsiness, apathy.

The very, very, poor, poor medical condition that he was in, anyone, even someone not under the influence of the massive doses of narcotics under which he was of the influence but who suffered from the critical types of injuries that he had would would not be at their peek mental state.

Just by nature of the physical condition. And then you put, so you got two things. Well, you got two things. So far, you got his poor medical condition to begin with. Critical medical condition to begin with, was not sure he was going to survive.

You got the massive doses of narcotics he was being given and then you have the fact that he was developing a raging pneumonia. He was developing complications from the arterial blood oxygen was dropping drastically throughout the day and night of the 30th.

The brain. The fuel of the brain, if you will, is oxygen. That is what the brain works on. If

* * *

[1124] in charge of his primary care while he stayed at the Twin Cities Hospital at Templeton?

A Yes.

MR. GALANTER: Do you want to make out through his qualifications?

BY MR. GALANTER:

Q And, Doctor, as a result of those injuries, were you required to perform some surgical procedures on Douglas Escobar.

A Yes. Within an hour of admission I took him to the operating room and under general anesthesia we did a an exploratory laparotomy repairing the gunshot damage to his diaphram, liver, stomach, small intestine. Urulogy helped me and we took out his left kidney. An orthopedic surgeon did the injury to his left mid forearm.

Q Okay. And happened after surgery? Was he admitted to the intensive care unit at the hospital?

A Yes, he was. He had a very complicated post operative course in that he had major injuries as stated above and required a lot of antibiotics, intensive respiratory therapy, pain medications and after he had been there about his second or third day it appeared to me, clinically he was going through delirium tremens.

[1125] Q Which is what?

A Withdrawal of alcohol and becoming very disoriented and irrational, and I had to sedate him with Valiums. It did resolve from this.

Q Now, Doctor, we have all of the medical reports and I notice from almost an hour or two after he got out of surgery you had prescribed Morphinesulfate; is that correct?

A Yes.

Q Can you tell me at what dosage levels you gave Mr. Escobar Morphinesulfate?

A I can't remember the exact dose. I don't have the nurse's records for that. But it was significant in that he required it every hour or two.

Q Okay. Doctor, did, do you recall whether or not the levels of Morphine you prescribed for him increased or decreased or stayed the same during his stay at the hospital?

A He took a great deal. Initially low levels that we gave him when he first came out of the operating room

weren't adequate and he required higher doses and more frequently.

Q Okay. Now, do you have your medical records in front of you?

A Yes.

* * *

[1129] frequently.

Q Is that the type of dosage or narcotic that would cause someone not to understand what was being said to them?

A Depending on the person. You could give a person two milligrams of Morphine which is a fairly low dose and then it can put some people all the way to sleep. It depends on the individuality of the patient. His age. The status of his internal organs and whether he has any prior use of narcotics before you use them to the greater tolerance you have and the larger dose you are required.

Q Okay. Now, on April the 30th he had been receiving Morphine for approximately three or four days; is that correct?

A Yes. He started receiving Morphine 4-27-88.

Q Okay. Now, being Mr. Escobar's primary care physician, do you have an opinion based on a degree of reasonable medical certainty whether or not specifically Mr. Escobar could have understood on April the 30th, 1988 anything that was being said to him?

A He might have appeared to be understanding but the usual actions of the Morphine that he was receiving could really effect his particularly his

* * *

[1146] you recall, on April the 30th, did he have something called a a vacuum tube coming out of his chest?

A Oh, it's called a chest tube or a chest thoracostomy tube. Yes. He had that out of his chest put out the night of the surgery and taken out 5-2-88.

Q And also, did he have a catheter tube in his bladder or penis?

A Yes.

Q And those would have been visible to anybody who walked into the hospital room?

A No. Basically he's covered with a sheet. I don't think you would see them unless the sheet was pulled down.

Q But does the drainage tube drain to something that's on the floor?

A Yes. Like a vacuum pump on the floor. Yes.

Q And the urine pack would be hanging on the side?

A The edge of the bed.

Q Hanging on the side of the bed?

A Yes.

Q And did he also have oxygen in his nostrils?

A Yes.

Q As well as IV tubes in his arm?

A Yes.

[1147] Q Okay. Overall, Doctor, would you say that he was near death during the time that you were treating him?

A The term people are used to, yes. He was in a critical state.

Q And that would apply to his medical and physical status on April the 30th as well; is that correct?

A Correct.

Q Thank you, Doctor?

THE COURT: Mr. Band, anything more?

THE BAND: No, Your Honor.

THE COURT: Doctor, thank you very much. Have a nice day.

(witness hung up)

THE COURT: You want to do the nurse?

MR. GALANTER: Yeah. What is her name, Michael.

MR. BAND: Diana Dyer.

THE COURT: The number.

MR. BAND: 805-543-5353. Now, that's the hospital. So she is working.

THE COURT: Okay.

MR. BAND: So, we are going to have to ask for supervisor nurse and she is the supervisor.

* * *

[1229] Men's Colony.

The only testimony presented concerning this statement shows that the defendant was lucid, alert and appeared to understand what was going on. He was given Miranda warnings and this Court concludes that the statement was freely and voluntarily given and that defendant knowingly and intelligently waived his Miranda rights.

The motion to suppress these statements also denied.

The fourth statement, the one of May 28th, of 1988 must be considered by the Court in a manner similar to the May 3rd statement.

While the defendant may have been tired, there is no testimony that he did not understand the Miranda warnings or that he did not have the capacity to understand them.

The Court concludes that the defendant's statements were freely and voluntarily made after knowingly and intelligently waiving his Miranda rights.

The motion to suppress these statements is likewise denied.

At this time I want to go back to the William's rule motion.

[1230] I have considered the argument of counsel, both counsel with regard to the William's rule testimony proffered by state.

While the court is familiar with the case law regarding the scope of William's rule testimony having been educated by Mr. Mendelson previously in the William's case. William's 72 or whatever that is. There are a lot of Williams cases.

The Court does not believe that the testimony which the state is seeking to illicit and present to this Court regarding the situation in California falls within the ambid of that rule.

Based upon this Court's consideration, the Court will, with due respect, deny the state's motion to allow William's rule evidence regarding the California situation.

MR. MENDELSON: Your Honor, is there a written order?

THE COURT: No. I don't have a written order on it.

MR. MENDELSON: May we just ask for one?

Judge, if you can clarify that. Does that also refer to—that just refers to the California shoot out? That doesn't —as to our

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[5128] THEREUPON:

DETECTIVE GEORGE MORIN

was called as a witness on behalf of the State, and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAESER:

Q. Good morning, detective.

A. Good morning, Mr. Laeser.

Q. Could you tell the ladies and gentlemen of the jury your name and where you work, please?

A. My name is George Morin, and I work with the City of Miami Police Department.

Q. And how long have you been working with that department, sir?

A. Since May of 1978.

Q. At the beginning of your work as a law enforcement officer, did you receive any particular type of training before you were sworn in?

A. I went through the standard police academy which is approximately six months and then through the field training officers program.

Q. What is a field training officer? How would that differ from other type of officer?

A. Field training officer is a person who trains

* * *

[5179] 8:34 p.m. is that an accurate reflection of the actual date and time that that procedure occurs?

A. Yes, sir.

Q. Okay. Have a seat, please.

Once you get through that physical procedure by that I mean going through the rights form and having him initial it and everything else, did you have any discussion with the defendant, by that I mean Dennis Escobar, as to whether or not he wanted to talk about the Miami case?

A. Yes, I did.

Q. What was his response at that point?

A. His response was that he would talk to the California authorities about their case, but he did not want to talk at all about the Miami case at that particular time.

Q. I want to sort of break that sentence down.

Did he say specifically he never wanted to talk about the Miami case or did he include the phrase at that time?

A. He included at that time in that phrase.

Q. Did you honor his request at that time in terms of not questioning him about the Miami case?

A. I did.

* * *

[5191] reading?

THE COURT: What are you reading from?

THE WITNESS: At this point I am looking down to attempt to find a different area.

THE COURT: These are your notes?

THE WITNESS: Yes, sir.

THE COURT: Overrule the objection.

MR. CARTER: Have you provided a copy of those notes?

THE COURT: You have all the reports. I think you were given all the reports, weren't you?

MR. CARTER: I don't have the copies of notes I don't believe.

THE COURT: Are you using notes?

THE WITNESS: These are the notes of the interview with Douglas Escobar that were made.

THE COURT: Were all those furnished?

MR. LAESER: Yes, sir.

THE COURT: Overrule the objection. You may proceed.

MR. LAESER: I have another set here.

THE WITNESS: And I further told him that his brother had gone as far as to tell us that he is the one that had fired the shot and that he Douglas had not fired the shot at all.

* * *

[5198] that he makes copies for defense counsel.

THE COURT: That's fine.

MR. LAESER: If you can mark these three items for identification.

THE COURT: The items that you are making reference to, they are part of the report.

THE WITNESS: That is the California portion and it is part of the supplemental report.

THE COURT: And these things that everybody has referred to, copies were given to Mr. Carter? Yes?

MR. CARTER: Yes.

THE COURT: You may proceed, Mr. Laeser.

BY MR. LAESER:

Q. Let's go to the point where we had broken which was that you had just completed transmitting certain information to the defendant, Douglas Escobar. You recall at one point whether or not there was a response by Douglas Escobar to the facts, the circumstances, that you were laying out for him in terms of what you believed you knew?

A. Yes, there was.

Q. What was his response?

A. He told us he was not a murderer.

Q. And how did you react to his statement that [5199] he was not the murderer?

A. I told him I know you are not a murderer. I know that you didn't fire a single shot, your brother fired the shot, but I need to hear from you exactly what happened.

Q. Did you respond to that line of statements?

A. Yes, told him regardless that he was there, that he would have to be truthful with us and he would have to answer for what his actions were.

Q. Did you give him any information as to whether

or not you might have had possession of the Mazda automobile?

A. Yes.

Q. What information did you tell him?

A. I told him that we, in fact, did have the Mazda, that it was in our custody in Miami and that, in fact, his fingerprints had been found on the gas cap of that Mazda.

Q. Did you try to determine from Douglas Escobar where the car had last been left?

A. Yes.

* * *

[5201] Q. Up to that point, did you know that information?

A. No, sir.

Q. Did you tell him during the course of that conversation that you believed him to be entirely truthful, partially truthful?

A. I told him that I believed he was coming along and that he was getting at the truth, but he wasn't truthful with us 100 percent at that particular time.

Q. Do you remember whether or not during the course of this particular interrogation, Douglas Escobar tried to find out specifically what information Dennis Escobar had told you and the other investigators?

A. I am sorry. I missed your question.

Q. Let's just take this interrogation. You are interrogating Douglas Escobar.

Does he ask you, does he try and pump you with information as to what his brother Dennis might have told the police?

A. Yes, he does.

Q. And do you tell him anything about what his brother told you?

A. I told him that it would be impossible at [5202] that time, at that point for us to tell him what his brother had said because that would be very easy for him to repeat what we had told him.

I told him that – just based on what I told him, he knew that we had, in fact, spoken to his brother, that we did, in fact, speak to his brother and that I wanted a truthful statement from him.

Q. At some point is there an emotional change? Do you see something take place or hear something take place that tells you that his mood had changed in some way?

A. Yes.

Q. What takes place?

A. I was able to notice a slight watering of his eyes.

Q. Did he say anything or do anything at the time that his eyes watered?

A. Yes, he did.

Q. What did he say or do?

A. He immediately said that it was not his fault.

Q. Did he explain what he meant by not his fault?

A. He said that it was the fault of the American Justice System, and we encouraged him to see what he

* * *

[5222] so it can be presented, considered or heard by anybody. It would be a way of preserving his statement.

Q. When you tell him that you want to record his statement, does he express to you in any way why it might be perhaps difficult or he might be hesitant for allowing you to record it?

A. He tells us it was a very hard thing to tell on yourself.

Q. Are you certain he said that? Did he say tell on yourself or tell on your brother or tell on somebody else?

A. No, he said tell on yourself.

A. At some point during the beginning of this second session, is there a discussion about the existence of a reward for the person or persons involved in the homicide of Officer Estefan?

A. Yes, there is.

Q. How does that first come up? How was that first mentioned?

A. He questioned if there was an award in a very positive manner as if knowing that there is one, just wanted to be reaffirmed or reassured of the fact that one did exist.

* * *

[5226] to keep the recorder going. Whatever he had to say to please say because it had to be recorded, but he was insistent on it being stopped and it was, in fact, stopped.

Q. Did you make a second try within a matter of moments just to start the recorder again?

A. Yes.

Q. And did you continue with that second recording?

A. Yes, for several minutes or for under a minute, I'm sorry.

Q. What caused the second recording tobe stopped?

A. He again requested that we stop the recorder.

Q. Did he at anytime tell you why it was that he wanted the recorder stopped?

A. He then told us that it was a very hard thing to tell on yourself and that he couldn't do it.

Q. In other words that he personally at this point had decided not to go ahead?

MR. CARTER: In other words. I object to that, your Honor. He is testifying.

THE COURT: Just say object and I'll sustain the objection.

* * *

[5238] the answers but what we needed from him were the reasons or the motives why things had occurred how they did.

Q. When you give him, when you throw all that. I have spoken to Douglas, Fatima, we have the information already, we just want you to tell us why, did he respond in some way?

Did he give you an answer back as to whether or not he could immediately go ahead and speak to you?

A. He didn't give any indicate that he would speak to us at that point.

Q. Early in this meeting, did the phrase or did the words electric chair come up?

A. Yes.

Q. I want you to explain to the jurors the context in which it came up, who spoke them and specifically what was said?

MR. CARTER: Objection, your Honor.

THE COURT: Objection is made at this time and for the reasons previously stated the objection is overruled.

You may proceed.

* * *

[5241] bedroom and that Dennis had told her–

MR. CARTER: Objection.

BY MR. LAESER:

Q. Please don't tell me what the conversation between Mr. and Mrs. Escobar was at that time, but did you relate information that you had concerning that at that point?

A. Yes.

Q. Did you give him any additional information as to what his brother, Douglas, had already told you at that time?

A. Yes. I told him that Douglas in his statement to us had told us that he was the one who had told Dennis to shoot.

Q. After you conveyed this information to Dennis Escobar, does he start to give you some information or some things that he wants to tell you?

A. Yes.

Dennis told me, he said, all right, I'll tell you exactly what happened and he proceeded to say that on the evening of Officer Estefan's murder, he and his wife were home alone, that Douglas came into the house and he told him that he had just shot a policeman.

Q. Based upon all the information gathered up until that point, did you believe that what he was [5242] telling you then was truthful?

MR. CARTER: Objection as to what he believed.

THE WITNESS: No.

THE COURT: Overruled.

THE WITNESS: No, I did not and what I did, I immediately cut him off.

I told him, I thought when we came back up here to the room that you were going to be truthful to us, that

you were going to tell us the truth, but this is a lie. Obviously, I don't want to listen to a lie and I told him, I'm leaving. If you want, if you want to tell us the truth, I will be more than happy to come back and Roberson and I then walked out of his room again and proceeded to walk out of the compound.

BY MR. LAESER:

Q. In terms of how you expressed your feelings about this being a lie, you've expressed it one way in the courtroom.

Were you angry? Were you telling him in a sort of angry tone that you thought he was lying to you?

A. No.

* * *

[5245] MR. CARTER: Object.

THE COURT: Sustained.

BY MR. LAESER:

Q. What was it that you thought at that time and expressed to Dennis Escobar was taking place?

A. I told Dennis that the information I had was that his wife was assisting and cooperating with the investigators in Miami.

Q. Did he make some sort of response to you concerning his wife?

A. He told me that if we left her alone, if we left his wife alone, that he would tell us all we wanted to know.

Q. Did you in any way indicate by way of a promise or an agreement that you would go easy on his wife or anything like that in order to get a statement?

A. No. I told Dennis that I didn't know the degree of his wife's involvement in the crime or in the murder of the police officer, and if she had, in fact, committed a

crime, she would have to deal with it with the Miami authorities but that I could not guarantee him what was going to happen.

* * *

[5256] directly after the interview with Douglas Escobar.

Q. Let me ask you some questions about that note pad before we go too far into it.

Could you look at the back of the note pad and just verbally without showing it to anybody describe what is shown on the back of that note pad?

A. Originally when I had spoken to Douglas Escobar I was trying to pinpoint a location to where they had left the Mazda used in the shooting and I drew, hand drew, freehand drew a sketch of the general area of where Dennis Escobar lived in an attempt to have Douglas more or less pinpoint to us where the Mazda was left.

Q. And the information that's on there concerning the streets and the direction from any location where you could actually find the Mazda, where did that information come from?

A. It came as a result of the conversation that I had with Douglas.

Q. In terms of what you tried to do concerning convincing Dennis Escobar that his brother, Douglas, had actually given a statement, when you wrote down the statement, did you write it down in English or Spanish?

A. I wrote it in English.

[5257] Q. What did you do in order to try to make certain that the words that you had written down in English would be conveyed back in Spanish to Dennis Escobar?

A. I brought in Officer Phil Palma who is a corrections officer with the State of California. He was a per-

son in charge of guarding Dennis while he was in the hospital wing of the prison and I asked Officer Palma to proceed reading to Dennis from this note pad translating from English to Spanish what was written down on that pad.

Q. In terms of the procedures that were involved, did you leave the building entirely? Did you stay close? What was involved there?

A. No. I asked Officer Palma to walk in the room. He was outside sitting in a chair by a door. I asked him to walk in the room, and once he walked in, I presented Officer Palma the note and I asked him to read these notes or to translate these notes in Spanish to Dennis, and Detective Roberson and I both walked out of the room. We left the door partially open but we walked out of the room and took the position that Palma had originally which was by the door of the room.

* * *

[5266] A. Dennis told me that Douglas told him at the time, if he gets out, shoot him.

Q. And does Dennis describe whether or not that officer, in fact, gets out of the police car?

A. Yes, he does.

Q. What does he tell you but the officer and what takes place as he is getting out?

A. He told me that Officer Estefan or the officer got out of the car. The police officer had his gun drawn. The gun was pointed in his direction and that the man yelled to him or them to get out of the car.

Q. Were you able to physically pinpoint in terms of your questioning where the police car was, where the officer was in relation to the two vehicles?

A. Yes, I did.

Q. What information did you get from Dennis about where the officer was?

A. He told me that the policeman was in between the patrol car and in between the Mazda. He was between both vehicles.

Q. He didn't tell you something like the police officer walked all the way on the driver's side of the car or anything like that?

A. No, sir.

* * *

[5295]When arrest is made immediately, it's not a whodunit homicide, so the arrest is made on the scene or shortly after the incident occurred.

When an arrest is or when a homicide is a whodunit, all you have is a body and you don't know who did what or why. The investigation could be very prolonged. They could go for months and years.

Q. Isn't is true that most of the homicides, if they are going to be solved, get solved within a 24 to 48-hour period?

A. I would say 72-hour period is the preference as far as solving one, but again, we have homicides that get solved years, decades, after they occur.

Q. There are cases that at some point would be referred to another unit within the police department such as a cold case squad or a case where some work on the case hasn't been solved within a short period of time, isn't that correct?

A. When they work a case, it's usually years old, the cold case squad.

Q. Would I be fair in stating, Detective Morin, that around the 20th to 25th maybe 26 day, that you and your partner were feeling a lot of pressure not only from

inside the police department but pressure that you were putting on yourself of why an arrest had [5296] not taken place up until that point in time?

A. Yes. We were obviously feeling that the case was open. Being the investigator, you feel that and that is probably more from yourself, from an internal source than external sources. You feel that maybe perhaps if somebody else had investigated it, they might have cleared it by now, maybe I haven't done everything that's possible and there is pressure that you place on yourself when an arrest is not made especially on a case like this.

Q. From a personal point of view, a fellow police officer is gunned down, everybody is asking you questions about it, supervisor, friends, members of the public and you basically have nothing to tell them and you are beginning to feel a sense of personal pressure as, you know, we need a break in the case; isn't that correct?

A. You feel the pressure and I don't think we need a break in the case. You say, God, give me a break in the case.

Q. Either way, you are looking for something?

A. Yes, always looking.

Q. As a matter of fact, when the phone call came in from California, you would have some feeling of this might be a let down, that is your first response

* * *

[5313] and that he would speak to us.

Q. As opposed to what Dennis did in the case saying he didn't want to talk to you, Douglas said that he wanted to talk, correct?

A. That's correct.

Q. Isn't it true, detective, that one of the first thing that Douglas said to you after going through the initial comments of why you were there and the Miranda Rights

Waiver Form is that he made the statement, I am not a killer?

He wanted you to know that very directly, did he not?

A. Yes.

Q. After he made the statement to you that he was not a killer, he went on to tell you that he was only a car thief, isn't that correct?

A. Yes.

Q. He wanted you to know that he was, in fact, confessing to stealing a car to you?

A. Yes. Well, to stealing a car, to stealing cars.

Q. He wanted you to know quite openly, quite candidly that he was, in fact, a car thief?

A. Yes.

Q. Now, you know I am a little confused,

* * *

[5349] Q. He spoke Spanish?

A. Yes.

Q. Where is Palma?

A. Sitting outside in a chair.

Q. Did you ask Palma to come inside?

A. Not on this particular case.

Q. What did Dennis tell you?

A. Pardon me?

Q. What did he tell you, Dennis?

A. He told us that on the night of the officer's murder he was at home with his wife when his brother Douglas came in and said that he had just killed a policeman.

Q. And who besides you can testify that he said that?

A. Your client and I are the only ones that spoke Spanish. There was no—

Q. There was no one else to hear that in Spanish but you?

A. Correct.

Q. Because Barrazza wasn't there?

A. No, he was not.

Q. Finale wasn't there?

A. No, he was not.

Q. But Palma was right outside, correct?

[5350] A. Yes.

* * *

[5355] Q. Asked about his wife?

A. He did.

Q. He asked where was his wife at this particular time?

A. He did.

Q. Didn't you know where she was at the time?

A. Yes.

Q. Did you tell him where she was at the time?

A. I told him she was at the police station back in Miami.

Q. Did he ask about his kids?

A. On one occasion he did.

Q. Do you know where his kids were?

A. He didn't ask where they were. He asked what would happened if his wife was to get arrested in Miami.

Q. And what did you tell him?

A. We would either have to find family members to take care of the children or that the State of Florida has a division of Health and Rehabilitative Services that woul would take them.

Q. He was concerned about his wife and children?

A. Yes.

Q. Isn't it a fact that first time you went there you told him that his wife had been arrested [5356] was at the police station and the kids will be taken away?

A. That is untrue.

Q. Isn't it a fact, sir, that you kept pressuring him and pressuring him with the use of his kids and he still wouldn't tell you anything?

A. That is also not true.

Q. And each time you left, he would call you back and ask you about his kids, wasn't that right? Each time you came back, he asked about his wife and the kids?

A. He asked about his wife on more than one occasion. That is when he asked about what would happen if his wife was to be arrested in Miami.

Q. Now, all of this, all of this is coming from a man whose statement you said he made, who was suspected of killing someone and tells you that, correct me if I'm wrong, he finally says to you, I can't tell you anything in essence because I would be putting myself in the electric chair?

A. He does state that at one point.

Q. And then later on he says I am ready to commit suicide. I'll talk to you?

[5357] A. I believe the word he used was, I know I am killing myself, but I'll tell you what occurred.

Q. So now we go from a man who knows that his life might be on the line and suddenly he doesn't give a damn anymore, he is ready to die, isn't that what you're telling us? His mind changed that quickly from a man who won't tell you a thing, who knows the possibility of death, who tells you he knows the possibility of death and now he says to you, okay, I am ready to commit suicide and he gives you a statement, after saying I know I am killing myself, is that true?

A. That's right.

Q. But no nobody, nobody but you, heard that?

A. That's correct. Well, several people heard or Roberson and I heard it. Nobody else understood it I believe.

Q. Like if a tree falls in the forest, does it make a sound? Nobody else heard it, did they? They would be able to say they heard it, but you—

A. Again, and I guess it's just a word game—

Q. No, I don't play—

A. Roberson heard it. Whether he understood—

Q. Roberson couldn't say he heard it, could he, what he heard rather?

[5358] A. I guess we'll have to hear that from Roberson if it becomes important.

Q. It's up to you.

But we do know one thing, you are the only one there who understood it?

A. That's correct.

Q. You were the only person that can come in here and tell us he told you those things?

A. Yes.

Q. You said you went there ones with a tape recorder, is that right?

A. Yes, we did.

Q. Did he give you a tape recorded statement?

A. No, he did not.

Q. So you were frustrated in an effort to get a tape recorded—

A. I wasn't frustrated into my effort getting the statement or not. Getting the statement was, again, Dennis' right and he opted not to.

Q. Had he given you a tape recorded statement, you could then say yes, he told me this and here is the cotton-picking voice telling me that?

A. The tape speaks for itself.

Q. You didn't have that, did you?

A. Pardon?

[5359] Q. You didn't have that?

A. No, sir.

Q. All we have, again, is your word?

A. Yes, sir.

Q. Is that correct?

A. That's correct.

Q. When you want to talk to Douglas now, Douglas had no reason to want to tell you anything because you told Douglas from the beginning I know you didn't do this, right, that is part of your come on?

A. Well, I didn't tell him I know you didn't do this. What I told Douglas was, I know that you didn't fire a shot.

Q. But you did not know that, did you?

A. I had some idea how it occurred.

Q. But you did not know that, did you? Yes or no?

A. Well, I can't answer it. It boils to the credibility issue of who I heard it from.

Q. Sir, even today, you don't know that?

A. Yes, I do.

Q. If you did, we wouldn't be here?

A. We would always be here.

MR. LAESER: This is being argumentative.

THE COURT: Sustained.

[5360] MR. CARTER: Withdraw that.

BY MR. CARTER:

Q. Next question. Douglas wanted a little money?

A. Yes, he did.

Q. He wanted a lot of money, $80,000 he wanted?

A. He wanted it.

Q. Didn't ask you about the reward once or twice, did he?

A. On several occasions.

Q. And he wanted to know if I tell you this, you can't give me the money, because you told him that, right—

A. That's right.

Q. —could you give it to my wife and kids?

A. Yes, he did say that.

Q. At that point $80,000—he told you what you wanted to know?

A. Yes.

Q. So long as it doesn't implicate that he is the person that did the shooting?

A. No information ever came about that he was the person that did the shooting.

Q. Now, Douglas cried at one point, didn't he, got remorseful and cried?

[5361] A. His eyes watered.

Q. And the same man who walks, putting guns in people's stomach cried, didn't he?

A. Yes.

Q. The same man who is known as the Bandit of Camino Real cried? Yes?

A. Yes.

Q. The "I will kill the cop before I go back to prison" —

A. Cried.

Q. A regular little pussycat at that point, wasn't he?

A. Yes.

Q. He was either telling you, I am sorry, I'll tell you about my brother, right—he even tells you something then?

A. Yes.

Q. This tough "hombre" is now Douglas, the pussycat, and you believed him, didn't you?

A. Yes, I did.

Q. You were taken in by him as everybody else was?

A. No, sir. One second, sir. I'd like to explain that, sir.

THE COURT: Go ahead.

[5362] THE WITNESS: Everything that Douglas Escobar told me or most of what Douglas Escobar told me has been verified either through other sources or through physical evidence one way or another.

MR. CARTER: You are making assumptions and drawing conclusions. You weren't asked for that.

I ask that be stricken and he is drawing a conclusion.

THE COURT: I am not going to strike it. Go on to the next question.

MR. CARTER: Thank you very much.

BY MR. CARTER:

Q. And when he cried, he told you about what he did supposedly and what his brother did, right?

A. Yes, he did.

Q. Did he ever tell you that that big gun belonged to him?

A. No, he did not.

Q. Did he ever tell you that the police officer ordered the driver out of the car?

A. No, he did not.

Q. Did he tell you that he was the driver of the car?

A. Yes, he did.

Q. Did he tell you whether the police officer [5363] approached from the passenger side or the driver's side?

A. From the passenger side.

Q. Now how long have you known Officer Estefan?

A. 13, 14 years.

Q. And he was a traffic police officer, correct?

A. Yes, he was.

Q. And he approached this car from the rear, is that what he told you?

A. He approached it from the passenger side.

Q. Did he come from the rear of the car? Did Douglas tell you that?

A. I don't remember Douglas telling me that.

Q. Did he pull the car up into a driveway?

A. Are you referring to Victor or Douglas?

Q. Did Douglas tell you he pulled the Mazda into a driveway?

A. Into the front yard of the house.

Q. He didn't back in there, he pulled in there, right?

A. Correct.

Q. And then he told you that the policeman ordered the passenger out of the car, right?

A. Yes.

Q. And this policeman of 17 years approached [5364] this car from the passenger side, right?

A. Yes.

Q. Because he wanted to give the passenger a ticket because this was a foreign car with a steering wheel on the right-hand side?

A. No, because the passenger was his closest threat.

Q. Threat?

A. Yes.

Q. Is the steering wheel on the right-hand side?

A. We are talking—

Q. The Mazda.

A. No, obviously.

Q. It's on the left?

A. Yes.

Q. That is where the driver was, right?

A. Yes.

Q. But you tell us that Douglas told you he approached the passenger and told the passenger to get out of the car?

A. That's correct.

Q. Did Douglas tell you at that point he squatted or squatted down in the seat?

A. No, he did not.

Q. Did Douglas tell you that the gun was on the [5365] passenger side of the—

A. Are you referring to before or after the incident?

Q. At the time the incident happened.

A. He didn't tell me where the gun was.

Q. He told you that he was wanted in California, didn't he?

A. Yes, he did.

Q. And he told you that he didn't want to go back to prison, didn't he?

A. He did.

Q. And he told you that he knew that if a police officer stopped him, he would have to go to prison, right?

A. Yes.

Q. That is the same man who had already threatened to kill a police officer before he went to prison, right, the same man?

A. Yes.

Q. Did he tell you that Dennis wasn't wanted by anyone?

A. He did not tell me that.

Q. Did he tell you that Dennis hadn't gone around threatening anyone?

A. He did not tell me.

[5366] Q. Did he tell you that Dennis wasn't running from the authorities?

A. He didn't tell me that either.

Q. Did he tell you that Dennis was known as the Bandit of Camino Real?

A. No.

Q. Did he tell you that Dennis put a gun on Ramon Arguello's face, chest rather?

A. No.

Q. But he told you that Dennis shot the police officer because he told him to?

A. Because he told him to and because he did not want his brother to go back to prison.

Q. That's what Douglas told you, right?

A. Yes, that's correct.

Q. Because Douglas wouldn't shoot a police officer because he is the one that is going to go back to prison but he wouldn't shoot?

Did he tell you that?

A. I'm sorry. I missed your question.

Q. I said Douglas told you he wouldn't shoot a police officer because he doesn't want to go back to prison, if he shoots a police officer, he might go back to prison?

A. He didn't say that.

[5367] Q. He didnt?

A. No.

Q. I don't believe he did. When you were talking to Douglas, he was very, very coherent, wasn't he?

A. Yes, he was.

Q. And he was laying up there with a tube in almost everything he had?

THE COURT: I think it's over there (indicating).

BY MR. CARTER:

Q. Was he looking like he looked in State's Exhibit Number 53 when you saw him that day?

A. Yes.

Q. He was lying there telling you all these things?

A. Yes.

Q. And he cried and he told you?

A. Yes.

Q. And he asked you once about the $80,000, he asked a second time about the $80,000, he asked you a third time about the $80,000, but this man here was the one that he claimed wanted to commit suicide by telling you that he shot the police officer?

A. He claimed that he knew he was killing [5368] himself, but that he would tell us about what happened with Officer Estefan.

Q. After four times of telling you, I'm not involved in this, he suddenly decides to commit–

MR. LAESER: Repetitious.

THE COURT: Let's move on, please.

BY MR. CARTER:

Q. Am I correct?

A. Yes.

Q. And the only person in the face of this earth who is testifying here now of that particular "fact", would be you?

A. That's correct.

Q. But you had available to you the opportunity to have someone witness the statement, witness signing of the rights?

MR. LAESER: Objection, your Honor. It's a question that has been asked, repetitious.

THE COURT: Sustained.

BY MR. CARTER:

Q. And you employed no one–

MR. LAESER: Objection, your Honor.

THE COURT: Sustained.

BY MR. CARTER:

Q. Now, Douglas blamed Dennis for the shooting [5369] right?

A. For his part in the shooting, yes, he did.

Q. And Douglas blamed the justice system for any predicament he was in, right?

A. Yes.

Q. Did he blame anybody else for anything? Did he blame the nurses for mistreating him?

A. No.

Q. Did he do that?

A. No.

Q. Did he blame the doctors for not taking care of him properly?

A. No, he did not.

Q. Did he blame the authorities for not bringing him any magazines like you did?

A. No.

Q. But he found fault, wouldn't accept the fact that he, himself, may be at fault, not the system: but he blamed the system and he blamed others, Dennis rather?

A. Yes.

Q. I am concerned about what he told you. Did he tell you that Dennis got out of the car to shoot the police officer?

A. Yes, he did.

[5370] 1 Q. So according to him, the police officer came up and Dennis got out of the car, correct?

A. Yes.

Q. Did he tell you whether or not Dennis fired from the window or was he outside when he fired the shot?

A. He told me Dennis was out of the car.

Q. Did he tell you how many shots Dennis fired?

A. Three or four.

Q. Did he tell you in which direction he fired those shots?

A. No.

Q. Did he tell you whether he was standing up over the police officer?

A. No.

Q. Did he tell you whether or not the police officer was coming towards him at the time or had turned to walk away?

A. He described it to me as the police officer having

his gun drawn on the passenger of the car and that leads me to believe that the police officer was facing him.

Q. Drawn on the passenger?

A. Correct.

Q. Facing the passenger?

[5371] A. Correct.

Q. But he didn't say that leaks you to believe that?

A. That leads me to believe that.

Q. But he never told you that?

A. No, no, sir.

Q. Approaching the passenger—

A. I'm sorry.

Q. He is approaching the passenger side of the car with his gun drawn is what he told you?

A. That's correct.

Q. On which side was Victor wounded?

A. On his left side.

Q. Left side, and he approached the car on the passenger side with his gun drawn.

Is Victor left-hand handed or right-handed, do you know?

A. I don't know.

Q. Did he tell you whether or not the police officer was facing Douglas when he was shot—I mean—Dennis when he was shot and had to turn to walk away?

A. He didn't.

Q. But you are absolutely certain the police officer didn't approach on the driver's side, correct?

A. Correct.

[5372] Q. He didn't tell you that the police officer having noticed someone squatting down turned to go back to his car?

He didn't tell you that, did he?

A. Those facts never came up, no.

Q. He didn't tell you that when he turned to go to his car, that's when the police officer was shot in the left side, correct?

A. No, that never—

Q. Or did he tell you as he approached the driver's side of the car, he shot him in the stomach and that spun him around?

A. No, he did not.

Q. The other shot came to the left arm?

A. No, he did not say anything like that.

Q. Or did he tell you that the sunroof was open and he stood up and he fired down into the left of the officer?

Did he tell you that?

A. No, sir.

Q. How much time did you spend with him overall?

A. Oh, well in excess of an hour and a half.

Q. But what he told you, and I want to make sure about this, is that the police officer approached from the passenger side, right?

[5373] A. Yes.

Q. Or ordered the passenger out of the car?

A. Yes.

Q. The passenger got out and shot the police officer. That's what he told you, right?

A. Yes.

Q. But he didn't tell you whether the police officer was coming towards the passenger or going away, correct?

A. Correct.

Q. And either way he came, whether he was going towards the driver or going towards the passenger or going away from the passenger, the shots in the body of Victor Esteban are at the same location that they were found, correct?

MR. LAESER: Objection, your Honor, to the form of the question.

I think it's outside the witness'–

MR. CARTER: If you know.

THE COURT: I think it's beyond.

BY MR. CARTER:

Q. Did he tell you that?

THE COURT: You can answer it.

THE WITNESS: No, he did not tell me that.

[5374] BY MR. CARTER:

Q. Did he tell you that it would be almost impossible for the passenger to have fired the shots from the position the passenger was in?

MR. LAESER: Objection, argument.

THE COURT: Yes, he testified on his direct. Go to another area, please.

BY MR. CARTER:

Q. You told us, sir, that Dennis told you that if it came down to having to come to court, he'd denied he ever told you that statement, right?

A. Yes.

Q. You knew that possibility existed when you first went to talk to him, didn't you?

A. Certainly.

Q. And you took no precautions?

A. I took my tape recorder, but came back empty-handed.

Q. You didn't ask Palma to come inside?

MR. LAESER: Objection for the sixth time.

THE COURT: Let's not do that again.

BY MR. CARTER:

Q. The only precaution you had was yourself?

A. The only precaution I had was a tape recorder which, again, I came back empty, and as far as Dennis'

[5375] conversation with me, it's obvious at this point that Dennis and I were the only persons in that room that spoke Spanish.

Q. Did Dennis tell you that Douglas shot the police officer?

A. He never said that.

Q. Think a moment.

A. I'm sorry. He told me that as one of the stories.

Q. My question is, did he ever tell you that Douglas shot the police officer? That is all it was.

A. Yes, on the second interview he did.

Q. Did you ever tell Dennis his wife was in custody?

MR. LAESER: I am sorry. I didn't hear.

THE COURT: Did he ever tell Dennis that his wife was in custody?

MR. CARTER: Withdraw.

BY MR. CARTER:

Q. Did you ever testify, tell anyone before, that you told Dennis his wife was in custody?

A. I don't recall testifying that way.

Q. Do you recall testifying in California?

A. I do.

MR. LAESER: Which statement?

[5376] MR. CARTER: I am talking about the trial testimony.

(Thereupon, a brief discussion was held off the record, after which the following proceedings were held:)

MR. CARTER: I'll try and refresh your recollection.

MR. LAESER: Page and line, please.

MR. CARTER: 367, line 17, sir.

THE WITNESS: Go ahead.

BY MR. CARTER:

Q. Did you testify that you told him his wife was in custody?

A. Again, I repeat I don't recall ever testifying that his wife was in custody, and it's not so stated on line 17.

Q. My question was, did you ever testify in a court of law that you told him his wife was in custody?

MR. LAESER: Most respectfully, this question is a question of bad faith. It's not in here.

THE COURT: Let me see what you have there, detective.

THE WITNESS: Line 17, your Honor.

MR. CARTER: Page 367, line 17.

[5377] THE COURT: Did you ever tell him that?

THE WITNESS: No, I did not tell them that.

BY MR. CARTER:

Q. Will you read line 17 see if that refreshes your recollection, that answer?

A. You are referring to page 367 California testimony line 17 and I'll read if you want.

Q. Go right ahead.

MR. LAESER: Please read the whole thing.

THE WITNESS: The question from the defense counsel at that point was, who was Mr. Frank Banqunhan (phonetic) the gentleman in California and isn't it true that you told him that his wife was a suspect in the investigation because of her involvement?

BY MR. CARTER:

Q. And your answer?

A. My answer is, "What I told him," and there is a pause, "he asked if his wife was in custody. I told him that his wife was at the present time."

Q. Keep reading.

A. "I told him that his wife was at the present time." That was a true statement.

* * *